

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

^,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	NO. 4: ^-A
	§	
^,	§	
	§	
Defendant.	§	

O R D E R

This order pertains to preparation of a status report and also contains important directives that will govern procedures applicable throughout the pendency of this action. Read this order carefully.

A. The Joint Status Report Requirements

Counsel¹ are directed to confer for the purpose of submitting a Joint Status Report in this case. This conference shall be deemed to be a conference of the type contemplated by Rule 26(f) of the Federal Rules of Civil Procedure. The Joint Status Report shall be filed by 4:00 p.m. on ^ [30 days], and

¹The term "counsel" as used herein includes pro se parties. For example, the term "plaintiff's counsel" means the plaintiff himself or herself if proceeding pro se.

shall address in separate paragraphs each of the following matters:

- (1) A brief statement of the nature of the case, including the contentions of the parties;
- (2) Any challenge to jurisdiction or venue;
- (3) Any pending motions (including the dates of filing of motions and responses), an estimate of time needed to file any contemplated motions and a description of anticipated motions;
- (4) Any matters which require a conference with the court;
- (5) Likelihood that other parties will be joined, identities of potential parties and an estimate of the time needed for joinder of such parties;
- (6) Requested trial date, estimated length of trial, and whether jury has been demanded;
- (7) A report concerning the settlement conference and related settlement matters as contemplated by this order;
- (8) A discovery plan as contemplated by Rule 26(f)(3) of the Federal Rules of Civil Procedure; and
- (9) Any other matters relevant to the status and disposition of this case.

Any differences between counsel as to the status of any of the above matters must be set forth in the report.

Plaintiff's counsel is responsible for initiating the status conference and for filing the Joint Status Report. All counsel must participate in the conference and shall sign the Joint Status Report.

B. Settlement Meeting Requirements (and Supplement to Joint Status Report Requirements)

Prior to the filing of the Joint Status Report, the parties and their respective lead counsel shall meet face-to-face to discuss settlement of this action. Individual parties and their counsel shall participate in person, not by telephone or other remote means. All other parties shall participate by a representative or representatives, in addition to counsel, who shall have unlimited settlement authority, and who shall participate in person, not by telephone or other remote means. If a party has liability insurance coverage as to any claim made against the party in this action, a representative of each insurance company providing such coverage who has full authority to offer to pay policy limits in settlement shall be present at, and participate in, the settlement conference in person, not by telephone or other remote means. The court expects the parties to comply with the requirements of Rule LR 16.3(a) of the Local Civil Rules of this court ("Local Civil Rules") that the parties make a good faith effort to settle. The parties shall include in their Joint Status Report a report detailing the date on which the settlement conference was held, the persons who were present, including the capacity of any representative who was present, a statement regarding whether meaningful progress toward settlement

was made, and a statement regarding the prospects of settlement. Dollar amounts of offers and demands are not to be disclosed if the case is to be tried non-jury.

C. Timing of Rulings on Motions

The court reminds the parties that a response and brief to an opposed motion must be filed within twenty-one (21) days from the date the motion is filed, Local Civil Rule LR 7.1(e), and that a reply brief may be filed within fourteen (14) days from the date the response is filed, Local Civil Rule LR 7.1(f). Each motion shall be deemed to be ripe for ruling by the court at the end of such time period. If the court concludes that the motion should be granted, the court normally will not await a reply before ruling. On occasion, the court will, upon motion or sua sponte, order an expedited response or reply. As a general rule, motions will be ruled upon without hearing; however, hearings will be scheduled as appropriate.

D. Nature of Legal Representation Required and Document Signing Requirements

All parties and attorneys in this action are reminded of the provisions of Fed. R. Civ. P. 11 and Local Civil Rules LR 7.1, LR 10.1, LR 83.7, LR 83.9, and LR 83.10. The rules do not contemplate that law firms are, or will be, admitted or authorized to practice before this court. Instead, the

representation is to be provided by individual attorneys who qualify to practice before this court under the provisions of Local Civil Rules LR 83.7, LR 83.9, or LR 83.10. Nor do the rules contemplate that simulated signatures of attorneys of record can be used, instead of actual signatures, on pleadings, motions, etc.

The court ORDERS that from this point forward all parties to this action, and their counsel, shall strictly comply with the requirements of the above-mentioned rules unless otherwise directed by the court, and that, in the course of doing so:

(1) Each attorney who participates in a conference contemplated by Local Civil Rule LR 7.1(a) shall be an attorney of record who is admitted to practice before this court pursuant to the provisions of Local Civil Rules LR 83.7, LR 83.9, or LR 83.10;

(2) Each certificate of service and certificate of conference shall be signed by either a pro se party or an attorney of record who is admitted or authorized to practice before this court pursuant to the provisions of Local Civil Rules LR 83.7, LR 83.9, or LR 83.10;

(3) A simulated signature of an attorney or party is unacceptable and will not be used;²

(4) None of the items filed with the papers in this action is to be signed by a law firm, as opposed to individual attorneys who are admitted or authorized to practice before this court pursuant to the provisions of Local Civil Rules LR 83.7, LR 83.9, or LR 83.10;³

(5) None of the items filed with the papers in this action is to be signed by an attorney who is not authorized to practice before this court pursuant to the provisions of Local Civil Rules LR 83.7, LR 83.9, or LR 83.10;

(6) Each pro se party shall sign each item filed by him or her on his or her own behalf;

(7) Strict compliance with the requirement of local counsel, as contemplated by Rule LR 83.10(a) is required. If relief from the Rule is sought, it must be by motion stating in detail a cause why such relief should be granted. The court does not grant relief from the Rule unless exceptional circumstances are presented by the motion; and

²Examples of a "simulated signature" are a fax or machine copy of a signature and a "signed by permission" signature.

³The United States Supreme Court has explained that in the federal practice a document filed with the court should be signed by the individual attorney, on his own behalf, and not on behalf of his firm. LeFlore v. Marvel Entm't Grp., 493 U.S. 120, 126 (1989).

(8) If local counsel is required by Rule LR 83.10(a), the name, address, bar number, and contact information for local counsel must appear in the signature block on each pleading, motion, or other item filed. If the requirement for local counsel has been waived by order of the court, the signature block on any pleading, motion, or other item filed shall indicate such waiver by stating "The local counsel requirement was waived by an order signed _____, 20____."

The court will consider ordering the denial of the relief sought by any item that has not been properly prepared, signed, and filed or the ordering that such an item be stricken from the record of this case.

E. Preparation for Filing of Evidentiary Items (Such as Appendices) and Similar Items

The court further ORDERS that: Each evidentiary item, including any exhibits, filed in connection with any pleading or other paper, shall be clearly marked by the exhibit number or letter, or other designation if any, assigned to the item. All such items shall be filed in a separate volume, bearing consecutive page numbers and appropriate index tabs so that the court can readily locate each item. Each collection of evidentiary items shall have at the front a table of contents

giving the description of each item in the collection and the tab and page number where the item can be found. Evidentiary items shall not be put together in such a fashion as to make them unwieldy. An item or collection of items of more than fifty pages shall be spiral-bound on the side. Counsel shall highlight, as appropriate, those portions of the items that are of particular pertinence. Submission to the court of any collection of cases or other legal authorities will be handled in a manner comparable to the foregoing directions relative to evidentiary items.

F. Adoption of Statements in Pleadings

Further, counsel are reminded that the federal rules contemplate only that statements in pleadings may be adopted by reference. Fed. R. Civ. P. 10(c). Attempted incorporation by reference of any other material may not be considered by the court.

G. Requests for Sealing of Items Are Discouraged

For the information of the parties, the court does not routinely make it a practice to allow documents to be filed under seal. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978) (the public has a common-law right to inspect and copy judicial records); SEC v. Van Waeyenberghe, 990 F.2d 845, 848 (5th Cir. 1993) (the court's discretion to seal records is to be

exercised charily); Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1177 (6th Cir.1983) (the First Amendment and the common law limit the court's discretion to seal records). See, also, United States v. Holy Land Found. for Relief & Dev., 624 F.3d 685, 690 (5th Cir. 2010) ("Public confidence [in our judicial system] cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view."). The parties are, of course, free to enter into any agreement between them as to confidentiality of documents produced in discovery.⁴ Any party desiring to file a specific document under seal should file a motion for leave to do so, accompanied by a memorandum giving with specificity (including a statement of all facts supporting such request and a citation and discussion of all legal authorities supporting the request) all reasons why there should be a sealing from public view of such document.⁵ Further,

⁴The court is not inclined to involve itself in such an agreement of the parties. There is no reason why the parties cannot put any agreement into a legally enforceable document without causing the court to devote its time and attention to the matter. Rule 26(c) of the Federal Rules of Civil Procedure should not be used as a vehicle for converting an agreement of the parties into a court order. Therefore, the court does not anticipate that the parties will request it to review any discovery agreement they have reached.

⁵The movant should bear in mind that simply showing that disclosure of the information sought to be sealed would harm a party's reputation or its business is not sufficient to overcome the strong common law presumption in favor of public access. Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983).

all facts recited in any such memorandum must be verified by the oath or declaration of a person or persons having personal knowledge thereof. Cf. United States v. Edwards, 823 F.2d 111, 118 (5th Cir. 1987) (if closure of a presumptively open proceeding is to withstand a first amendment challenge, the court must make specific fact findings demonstrating that a substantial probability exists that an interest of a higher value will be prejudiced and that no reasonable alternatives will adequately protect that interest).

H. Requirements Relative to Proof of Service of Summonses and Related Items

The form return of service that accompanies the form summons available through the clerk's office (which can be found on the court's website) is not sufficiently explanatory to ensure that its completion will provide the court all the information the court will need to determine whether service of process properly has been accomplished. Normally the adequacy of service of process is a nonissue, but it does become an issue when entry of default or a default judgment is sought and under other limited circumstances. The court has found that in a large percentage of the cases when the adequacy of service becomes important, the returns of service on file do not provide the court the information the court must have to determine adequacy. The court

expects counsel to do whatever is necessary to provide the court a return of service that is sufficient to give the court all the information the court needs to evaluate the adequacy of service. The court recommends that the parties prepare and use in any case in which adequacy of service might become an issue a custom-drawn return of service for completion and filing with the papers in the case, attached to a copy of the summons to which the return of service relates. The court suggests that the parties consider the illustrative proof of service forms that are set forth below:

1. Form for Return of Service of Process Where
Process Directed to an Individual

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

_____ ,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CASE NO. 4:09-CV-____-A
	§	
_____ ,	§	
	§	
Defendant.	§	

RETURN OF SERVICE

Before me, the undersigned authority, personally appeared _____, who, after having been duly sworn by me, upon his/her oath deposed and said as follows:

"I hereby certify that: At _____ o'clock
_____.m. on _____, 20__, I received
for service the original and copy of a summons

issued in the above-captioned action directed to _____ and a copy of the _____ filed by _____ in such action, which was attached to the original of such summons. I executed such summons at _____ o'clock ____ .m. on _____, 20__, by delivering the original thereof, with the copy of such _____ attached thereto, to _____, defendant, personally, at _____ Street, _____, Texas _____, having first endorsed on the original of the summons the date of delivery. A copy of the summons I delivered is attached to this Return of Service.

"I further certify that I am over the age of eighteen, and that I am not a party to the above-captioned action."

(Name and Address of Serving Officer)

Service Fee: \$ _____

Subscribed and sworn to before me, the undersigned authority, on this _____ day of _____, 20__, by _____.

Notary Public in and for the State of Texas

My Commission Expires: _____, 20__.

2. Form for Return of Service of Process
Directed to a Corporation, Partnership, or
Other Nonhuman Entity

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

_____ ,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CASE NO. 4:09-CV-____-A
	§	
_____ ,	§	
	§	
Defendant.	§	

RETURN OF SERVICE

Before me, the undersigned authority, personally
appeared _____, who, after
having been duly sworn by me, upon his/her oath deposed
and said as follows:

"I hereby certify that: At _____ o'clock
_____.m. on _____, 20__, I received for
service the original and copy of a summons issued in
the above-captioned action directed to _____
_____ and a copy of the
_____ filed by _____
in such action, which was attached to the original of
such summons. I executed such summons at _____
o'clock _____.m. on _____, 20__, by
delivering the original thereof, with the copy of such
_____ attached thereto, to

[name of individual to whom summons was delivered]
personally, who is _____

[title of person to whom delivery was made]
and who is authorized by _____
to receive such summons on behalf of _____
_____. I endorsed on the original of
such summons when I delivered it the date of delivery.

Such delivery occurred at _____
Street, _____, Texas _____. A copy of
the summons I delivered is attached to this Return of
Service.

"I further certify that I am over the age of
eighteen, and that I am not a party to the above-
captioned action."

(Name and Address of Serving
Officer)

Service Fee: \$_____

Subscribed and sworn to before me, the undersigned
authority, on this _____ day of _____, 20____, by
_____.

Notary Public in and for the
State of Texas

My Commission Expires: _____, 20____.

The court is not suggesting that other forms of return of
service would not provide the needed information, nor does the
court suggest that the illustrative forms will cover all service
of process situations, such as substituted service of process or
other forms of service of process where personal service on the
defendant or an authorized representative of the defendant is not
contemplated. The court assumes that the parties can do whatever
drafting is necessary to cause the return of service in each
instance to give the court the information the court needs to
evaluate whether the service of process has been accomplished in

a legally acceptable manner. The parties are alerted to the fact that the court normally will not take any action on behalf of a party that is dependent on adequacy of service of process unless a return of service that provides sufficient information to satisfy the court that there has been legally adequate service is in the case file.

* * * * *

Strict compliance with the terms of this order is required. Should any party or counsel fail to cooperate in doing anything required by this order to be done, such party or counsel or both will be subject to sanctions, including dismissal or entry of default without further notice. See Fed. R. Civ. P. 16(f).

I. Additional Requirements

No process shall be served upon any person in attendance at any conference held pursuant to the requirements of this order.

Failure to timely submit the Joint Status Report or to cooperate in the preparation and the filing of the report or to participate as required in the settlement conference may result

in the imposition of sanctions, including dismissal or entry of default without further notice. See Fed. R. Civ. P. 16(f).

THE COURT SO ORDERS.

SIGNED November 12, 2014.

JOHN MCBRYDE
United States District Judge